



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1260]

Certain Toner Supply Containers and Components Thereof (II)

Commission Determination to Review in Part an Initial Determination Granting Complainants' Motion for Summary Determination of Violations of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review in part an initial determination ("ID") issued by the presiding chief administrative law judge ("CALJ") granting summary determination of violations of section 337. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, "Canon"). 86 FR 19287-88 (Apr. 13, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), based on

the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner supply containers and components thereof by reason of infringement of certain claims of thirteen patents: U.S. Patent Nos. 10,209,667; 10,289,060; 10,289,061; 10,295,957; 10,488,814; 10,496,032; 10,496,033; 10,514,654; 10,520,881; 10,520,882; 8,565,649 (“the ’649 patent”); 9,354,551 (“the ’551 patent”); and 9,753,402 (“the ’402 patent”). *Id.* at 19287. The complaint further alleges that a domestic industry (“DI”) exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the ’649, ’551, and ’402 patents (collectively, the “Asserted Patents”) as to the accused products identified in the notice of investigation (“NOI”). *Id.* The NOI named eleven respondents: (1) Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”) of Sichuan, China; (2) Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”) of Sichuan, China; (3) Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”) of Ganyuqu, China; (4) ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”) of SiChuanSheng, China; (5) Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”) of Los Angeles, California; (6) Do It Wiser, LLC d/b/a Image Toner of Wilmington, Delaware; (7) Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”) of Chengdushi, China; (8) MITOCOLOR INC. (“TopInk”) of Rowland Heights, California; (9) Xianshi yanliangqu canqiubaihuodianshanghang of Shanxisheng, China; (10) Zhuhai Henyun Image Co., Ltd. of Zhuhai, China (collectively, the “Defaulting Respondents”); and (11) Shenzhenshi Keluodeng Kejiyouxiangognsi (“KenoGen”) of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.* at 19287-88. The question of whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the remaining patents is the subject of the severed investigation based on the

same complaint, Inv. No. 337-TA-1259. *See* 86 FR 19284-86 (Apr. 13, 2021).

On May 27, 2021, the Commission granted Canon's motion to amend the complaint and NOI to change the identification of Do It Wiser, LLC d/b/a Image Toner to Do It Wiser, Inc. d/b/a Image Toner (hereinafter, "Do It Wiser") and to make related changes in paragraph 31 of the complaint. Order No. 6 (May 17, 2021), *unreviewed by* 86 FR 29806-07 (June 3, 2021).

On September 7, 2021, the Commission terminated the following asserted claims from the investigation based on Canon's withdrawal of the complaint as to those claims: (i) claim 2 of the '649 patent; (ii) claims 2, 3, 6, and 7 of the '551 patent; and (iii) claims 25-27, 39-41, and 46 of the '402 patent. Order No. 10 (Aug. 12, 2021), *unreviewed by* Comm'n Notice (Sept. 7, 2021).

Also on September 7, 2021, the Commission terminated respondent KenoGen from the investigation based on Canon's withdrawal of the complaint as to KenoGen. Order No. 12 (Aug. 13, 2021), *unreviewed by* Comm'n Notice (Sept. 7, 2021). As a result, the ten Defaulting Respondents are the only respondents remaining in this investigation.

On October 29, 2021, the Commission found the Defaulting Respondents in default for failing to respond to the complaint and NOI and failing to show cause why they should not be found in default. Order No. 15 (Sept. 29, 2021), *unreviewed by* Comm'n Notice (Oct. 29, 2021).

On October 1, 2021, Canon filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the CALJ recommend that the Commission issue a general exclusion order ("GEO"), issue cease and desist orders ("CDOs") against certain respondents, and set a 100 percent bond for any importations of infringing goods during the period of Presidential review. On October 25, 2021, OUII filed a response supporting Canon's motion and requested remedial relief. No Defaulting Respondent filed a response to Canon's motion.

On February 11, 2022, the CALJ issued the subject ID granting Canon's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that:

(i) the Commission has subject matter, personal, and in rem jurisdiction in this investigation; (ii) Canon has standing to assert the Asserted Patents; (iii) Canon has satisfied the importation requirement as to all Defaulting Respondents; (iv) the accused products practice claims 1, 6, 7, 12, 25, and 26 of the '649 patent, claims 1, 4, and 5 of the '551 patent, and claims 1, 15-18, 32, 36, and 37 of the '402 patent; (v) Canon has satisfied the technical prong of the DI requirement with respect to the Asserted Patents; (vi) Canon has satisfied the economic prong of the DI requirement with respect to the Asserted Patents; and (vii) no claim of the Asserted Patents has been shown invalid. The CALJ's recommended determination on remedy and bonding recommended that the Commission: (i) issue a GEO; (ii) issue CDOs against eight respondents (*i.e.*, Digital Buyer, Do It Wiser, TopInk, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang); and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review. No party petitioned for review of the subject ID.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's *Federal Register* notice. 87 FR 9379-80 (Feb. 18, 2022).

Having reviewed the record in this investigation, including the subject ID, the Commission has determined to review the subject ID in part with respect to the ID's analysis of the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written

submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the CALJ on remedy and bonding.

In their initial written submissions, Canon and OUII are requested to submit proposed remedial orders for the Commission's consideration. Canon is further requested to identify the

dates the Asserted Patents expire, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on **April 13, 2022**. Reply submissions must be filed no later than the close of business on **April 20, 2022**. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1260) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and

Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on March 30, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 30, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022-07097 Filed: 4/4/2022 8:45 am; Publication Date: 4/5/2022]